IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/04/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S. SARDAR ZACKRIA HUSSAIN

Civil Misc. Appeal No. 425 of 1991 and Civil Misc. Appeal No. 426 of 1991

Seethalakshmi Ammal,
W/o A.T. Ramaswamy Naicker,
Alangulam, Sattur Taluk,
Ramanathapuram District. .. Petitioner/Appellant in both C.M.As.

-Vs-

1. Tmt. R. Ganapathi Ammal,
2. Tmt. Seethammal,
3. Rangammal (Deceased),
4. Justice Mr. A. Alagiriswamy,
5. K. Renga,
6. Dr. A. Rengalakshmi,
7. J. Subbulakshmi,
8. A. Thirupathi Venkatachalapathy,
9. A. Thirumalai Srinivasan.
(Respondents 5 to 9 were brought on record
as L.Rs., of deceased 3rd Respondent, as per
order of Court dated 4-7-2002.) .. Respondents in C.M.A.No. 425/91.

1. Justice Mr. A. Alagiriswamy,
2. Tmt. R. Ganapathi Ammal,
3. Tmt. Seethammal,
4. Tmt. Rangammal (Deceased),
5. K. Renga,
6. Dr. A. Rengalakshmi,
7. Tmt. J. Subbulakshmi,
8. A. Thirupathi Venkatachalapathy,
9. A. Thirumalai Srinivasan.
(Respondents 5 to 9 were brought on record
as L.Rs. of the deceased 4th Respondent,
as per order of Court dated 4-7-2002.)

.. Respondents in C.M.A.No.426/1991.

Appeals against the Common Order passed in O.P.Nos. 3/81 and 2/81 respectively on the file of the Subordiante Judge, Srivilliputhur, dated 3-5-1988.

!For appellant in both CMAs. ..... Mr. S.V. Jayaraman,
Senior counsel for Mr. S. Kadarkarai

^For Respondents 1,2 and .....Mr. V. Sitharanjandas
5 to 9 in CMA.425/91
and for Respondents 2,3,5
to 8 in CMA.426/91.

:COMMON JUDGMENT

(Judgment of the Court was delivered by P. Sathasivam,J)

Seethalakshmi Ammal, wife of A.T. Ramaswamy Naicker is the appellant in the above appeals. C.M.A.No.425/1991 is directed against the order passed in O.P.No. 3/1981 on the file of the Subordinate Judge, Srivilliputhur dated 3-5-1988. The very same appellant has filed C.M.A.No.426/1991 questioning the order passed in O.P.No. 2/1981 of the same Court dated 3-5-1988.

2. In respect of disputes between Ganapathyammal, Seethammal and Rengammal on the one side and A.T. Ramasamy Naicker on the other, and in view of pendency of civil matters in the High Court as well as the Sub Court, Ramanathapuram at Madurai, the parties have agreed to resolve the same by way of arbitration; accordingly Justice Mr. A. Alagiriswamy, Retired Judge of the Supreme Court, was appointed as arbitrator. The matters referred to the arbitrator are:
1.Giving effect to the decree in A.S.No.214 and 462 of 1961 of the High Court of Madras and C.R.P.Nos.913 and 3148/72 pending in the High Court;

2.S.A.865 of 1971 pending in the High Court of Madras;

3.Decree in A.S.No.33 of 1975 of the Sub Court of Ramanathapuram at Madurai.

The parties to the dispute are (1) Ganapathy Ammal; (2) Seethammal and (3) Rengammal. They are the daughters of Rengasamy Naicker. The arbitrator has arrayed them as plaintiffs. The party to the dispute is A.T. Ramaswami Naicker who has been described as defendant. After considering all the disputes, the arbitrator has passed his decision on 30th March,1977. The first issue relates to allotment of lands. Since there is no dispute regarding the allotment of lands, it is unnecessary for us to refer the details and mode of allotment, extent of land etc. The other issue considered by the arbitrator relates to mesne profits. The decision of the arbitrator shows that the plaintiffs claimed Rs.1,000/-an acre per year for garden lands and Rs.150/- per acre for dry lands. On the other hand, the defendant A.T.

Ramaswami Naicker claimed that garden land will fetch Rs.50/- an acre and dry land Rs.10/- an acre. The price of land according to the plaintiffs is Rs.6000/- an acre for garden land and Rs.1000/- an acre for dry land. The defendant valued the garden land at Rs.2750/- an acre. The arbitrator has referred to the value fixed by the Land Acquisition Officer. Considering all the above details, the arbitrator has fixed Rs.500/- an acre per year as mesne profits for garden land and Rs.50/- an acre per year for dry land. According to the arbitrator, the total amount due till 6-4-1975 is Rs.60,000/-. The arbitrator has also held that after 6-4-75 till possession is given of the lands as decided in the Award the mesne profits will be payable at the same rate. The said Award is dated 30-03-1977.

3. The arbitrator has filed O.P.No.2/1981 before the Sub Court, Srivilliputhur under Section 14 (2) of the Arbitration Act. The defendant-A.T. Ramaswamy Naicker filed O.P.No.3/81 before the same Court to set aside the award on various grounds. Pending the said O.P., due to death of A.T. Ramaswamy Naicker, his wife Seethalakshmi Ammal was brought on record in O.P.No. 3/81. Considering the issues raised, the learned Subordinate Judge, Srivilliputhur tried O.P.Nos.2/81 and 3/81 together. In O.P.Nos.2/81 plaintiffs 1 to 3 were shown as respondents 1 to 3 and defendant-A.T. Ramaswami Naicker as 4th respondent. After his death, her wife Seethalakshmi was brought on record as 5th respondent in the said petition. For convenience, the learned Subordinate Judge referred to the parties as described in O.P. No.2/81. It is further seen that on behalf of respondents 1 to 3 therein, documents were marked as Exs. A-1 to A-10 and one Ayyappa Naicker was examined as P.W.1. On the side of the 5th respondent therein, Exs. B-1 to B-13 were marked and no one was examined. The learned Subordinate Judge after framing issues and after considering the evidence both oral and documentary, by a common order and decree dated 3-5-1 988, accepted the award of the arbitrator dated 30-3-77 and allowed O.P.No.2/81, but dismissed O.P.No.3/81 filed by A.T. Ramaswamy Naicker and pursued by Seethalakshmi Ammal. Questioning the said common order, Seethalakshmi Ammal alone has preferred the above appeals.

4. Heard Mr. S.V. Jayaraman, learned senior counsel for the appellant and Mr. V. Sitharanjandas for contesting respondents.

5. Mr. S.V. Jayaraman, learned senior counsel for the appellant, has raised the following contentions:
i) The arbitrator has not conducted any enquiry and parties were not heard; accordingly the award is liable to be set aside;

ii) The quantum of mesne profits arrived by the arbitrator has no basis for the same;

iii) The arbitrator has committed an error in directing the appellant to pay mesne profits after 06-4-75 till possession was given on the same rate as decided.

On the other hand, Mr. V. Sitharanjandas, learned counsel for the contesting

respondents, would contend that the parties were heard and given sufficient opportunity, that the quantum of mesne profits awarded is reasonable and that in the absence of any error apparent on the face of it and also of the fact that the learned Subordinate Judge considered all the aspects and rightly passed the impugned order, there is no ground for interference.

6. We have carefully considered the rival submissions.

7. In the earlier part of our judgment, we have already referred to the details regarding the dispute between the parties; hence it is unnecessary to refer the same once again. Now we shall consider the first contention raised by the learned senior counsel for the appellant. Though it is stated that the appellant was not heard and no enquiry was conducted by the arbitrator, a perusal of the decision of the arbitrator clearly shows that all the parties to the dispute were heard. As we have already referred to, decision/issue No.1 relates to allotment of lands. The discussion of the arbitrator regarding "allotment of lands" would show that the defendant A.T. Ramaswamy Naicker, father of the appellant herein, did not raise objection to the claim of the plaintiffs (respondents 1 to 3 in these appeals) as well as the allotment made by the arbitrator. Inasmuch as the defendant did not raise objection before the arbitrator with regard to the allotment of lands, the same cannot be questioned either before the Sub Court or before us. Likewise, though the appellant-Seethalakshmi Ammal was arrayed as a party in O.P.Nos.2/81 and 3/81 before the Sub Court, Srivilliputhur, admittedly, no one was examined on her side in support of her claim. On the other hand, on the side of the plaintiffs, one Ayyappa Naicker, husband of one Rengammal, third respondent in C.M.A.No.425/91 and 4th respondent in C.M.A.No.426/91 was examined as P.W.1. With regard to the enquiry and personal hearing by the arbitrator, P.W.1 in his cross-examination has specifically stated "

He denied the suggestion that A.T. Ramaswamy Naicker was not given notice for enquiry. On the other hand, he deposed that,

He once again denied the suggestion that the arbitrator had not enquired both sides. A perusal of the oral evidence of the sole witness, namely, P.W.1 shows that both the parties were enquired by the arbitrator and that the arbitrator, after considering all the materials, has passed the award on 30-3-77. This aspect was considered by the learned Subordinate Judge in detail. Exs. A-1 and A-2-muchalika executed by the defendant conveying his decision for referring the dispute before an arbitrator. The same was rightly accepted by the learned Subordinate Judge who found that both parties, including the husband of the appellant, namely, A.T. Ramaswamy Naicker agreed for an amicable settlement in respect of their dispute by way of arbitration proceedings. We have already referred to the fact that the said Ramaswamy Naicker did not raise any objection with regard to the allotment of lands. Even before the Sub Court, though on the side of the plaintiffs/respondents 1 to 3, P.W.1 was examined, the fact remains that no one was examined on the side of the 5th respondent in support of her claim. Under these circumstances, we reject the first contention raised by the learned senior counsel for the appellant.

8. Coming to the second contention, namely, quantum of mesne profits, learned senior counsel for the appellant himself was not serious in pursuing the said contention. The perusal of the decision of the arbitrator shows that he considered the value furnished by the plaintiffs, defendant, and the value fixed by the Land Acquisition Officer and after analysing the same, he has fixed Rs.500/- an acre per year for garden land and for Rs.50/- an acre per year for dry land as mesne profits. In this way, he arrived the total amount due till 6-4-1975 at Rs.60,000/- and also directed that after 6-4-75 till possession was given mesne profits would be payable at the same rate. In this regard, it is relevant to note that even before the arbitrator and before the learned Subordinate Judge, the appellant herein has not substantiated her claim that the quantum of mesne profits arrived was either excessive or unreasonable. In the absence of any contra evidence on the side of the appellant, we are of the view that the learned arbitrator was right in fixing the same, which was rightly confirmed by the learned Subordinate Judge. We have already referred to the fact that the learned senior counsel for the appellant was not serious about the quantum; accordingly we hold that the quantum of mesne profits arrived at by the learned arbitrator is perfectly in order and the same was rightly accepted by the learned Subordinate Judge and hence we reject the said contention.

9. Coming to the last contention, namely, that the arbitrator was not justified in directing the defendant to pay mesne profits at the same rate till possession was given. As stated earlier, though the appellant has raised an objection before the learned Subordinate Judge, the same has not been substantiated by placing acceptable evidence. Though under the Code of Civil Procedure, the parties are entitled to claim mesne profits for a maximum period of three years, inasmuch as the parties have agreed for a settlement through arbitration, we are of the view that such limitation is not applicable to the arbitration proceedings. The same was also considered by the learned Subordinate Judge, who rightly rejected the claim of the appellant herein. Though it is vehemently argued that possession was handed over to respondents 1 to 3 herein-plaintiffs therein, the said aspect was not proved by A.T. Ramaswamy Naicker before the arbitrator and Seethalakshmi Ammal before the learned Subordinate Judge. In the absence of any other evidence regarding handing over possession, the said contention questioning the award of the arbitrator and directing the appellant to pay mesne profits till possession was given cannot be faulted with. We are of the view that the learned arbitrator was fully justified in directing the defendant to pay mesne profits at the same rate till possession is given. The same was rightly considered by the learned Subordinate Judge. Accordingly we are unable to accept even the last contention raised by the learned senior counsel for the appellant.

10. It is relevant to refer a decision of the Supreme Court in ISPAT ENGINEERING AND FOUNDRY WORKS v. STEEL AUTHORITY OF INDIA LTD., reported in [(2001) 6 Supreme Court Cases 347] wherein the Supreme Court has held that since the parties chose their own arbitrators to adjudicate the dispute between them, the parties cannot object to such an adjudication or decision either upon the law or on the facts except however as envisaged in terms of Section 30 of the Act of 1940. It is also settled law that reappraisal of evidence by the court is not permissible. Their Lordships have also held that

the award of arbitrator is ordinarily final and conclusive unless a contra evidence is disclosed in the agreement itself.

11. The scope for interference by the Court with an award passed by the arbitrator has been considered by the Supreme Court in a recent judgment in INDU ENGINEERING AND TEXTILES LTD., v. DELHI DEVELOPMENT AUTHORITY, reported in AIR 2001 Supreme Court 2668 in the following manner: (para 5)

"5. The scope for interference by the Court with an award passed by the arbitrator is limited. Section 30 of the Arbitration Act, 1940 provides in somewhat mandatory terms that an award shall not be set aside except on one or more of the grounds enumerated in the provisions. The three grounds set out in the Section are:
(a) that an arbitrator or umpire has mis-conducted himself or the proceedings;
(b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35;
(c) that an award has been improperly procured or is otherwise invalid.
Interpreting the statutory provision Courts have laid stress on the limitations on exercise of jurisdiction by the Court for setting aside or interfering with an award in umpteen cases. Some of the well recognised grounds on which interference is permissible are:
(1) Violation of principle of natural justice in passing the award;
(2) Error apparent on the face of the award;
(3) The arbitrator has ignored or deliberately violated a clause in the agreement prohibiting dispute of the nature entertained;
(4) The award on the face of it is based on a proposition of law which is erroneous, etc?."

12. In MAHARASHTRA SEB v. STERILITE INDUSTRIES (INDIA), reported in (2001) 8 Supreme Court Cases 482, the Supreme Court has held that unless the error of law is patent on the face of the award, neither the High Court nor the Supreme Court c an interfere with the award.

13. We have already held that both parties were enquired and heard by the arbitrator, no objection was raised by the defendant (father of the appellant herein) regarding allotment of lands and even regarding handing over possession except the plea the same has not been substantiated either before the arbitrator or before the learned Subordinate judge. Accordingly we hold that the appellant has not satisfied any one of the recognised grounds as pointed out in AIR 2 001 Supreme Court 2668 (cited supra) for interference by this Court. We are also satisfied that there is no error apparent on the face of the record for interference by this Court. Since the scope for interference by this Court with an award passed by the arbitrator is limited, more particularly in the light of Section 30 of the Arbitration Act, we do not find any ground for interference.

14. On the discussions in the foregoing paragraphs, we find absolutely no substance in both these appeals; hence they are dismissed. No costs.
11-04-2003

R.B.
Index:- Yes.
Internet:-Yes.
To:-
The Subordinate Judge, Srivilliputhur.